IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3138 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AGRICULTURAL PRODUCE MARKET COMMITTEE

Versus

BODELI GRAM PANCHAYAT

Appearance:

1. Special Civil Application No. 3138 of 1992

MR JIVANLAL G SHAH for Petitioner No. 1-2

MR PRAFUL J BHATT for Respondent No. 1

MR KS JHAVERI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 01/03/2004

ORAL JUDGEMENT

The petitioners have filed this petition under Article 226 of the Constitution of India praying for

direction restraining the respondents from collecting any octroi duty on any agricultural produce that may be brought by any agriculturist in the market yard of the first petitioner Market Committee at Bodeli in violation of the provisions contained in Rule 36A of the Gujarat Gram and Nagar Panchayats Taxes and Fees Rules 1964 as amended by the Gujarat Gram and Nagar Panchayats Taxes and Fees (Amendment) Rules, 1969.

2. The petition was admitted on 24.8.92. At that time, this Court has passed order with regard to interim relief and observed that octroi being an indirect tax, burden of which is ordinarily passed on to the ultimate consumers. It is further observed that it is not even averred in the petition that the importer himself is suffering the burden of octroi and, therefore, while considering the relief of refund of the amount collected as and by way of octroi, the question of unjust enrichment may also arise and considering those aspects, interim relief was refused.

3. Affidavit in reply was filed on behalf of respondent No.2 wherein contention was raised that the dispute between respondent Nos.1 and 2 was pending before the appropriate Authority and it was also stated that the petitioner has got an alternative remedy to challenge the decision by way of appeal to the District Panchayat. The averments made in the petition were also seriously disputed by the respondent No.2.

4. Mr.H.J.Shah, learned counsel for the petitioners submits that as per the provisions contained in rule 36-A of the aforesaid rules, the Panchayat is not entitled to collect any octroi duty from the agriculturists who were bringing produce to the market yard and hence the respondents be restrained from collecting octroi duty.

5. The issue has become academic on account of the fact that subsequently octroi has been abolished and the amount of octroi payable earlier was very negligible. Hence, without going into the merits of the matter and without expressing any opinion on the issue based on the interpretation of the provisions contained in rule 36-A, this Court is not inclined to grant any relief as prayed for in the present petition, looking to the smallness of the amount collected by way of octroi and in view of the further fact that octroi has since been discontinued.

6. In above view of the matter, the petition is dismissed. Rule is discharged without any order as to costs.

(K.A.Puj, J.)

(vjn)